

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10 || PATRICK FITZGERALD CHIOINO, No. C 06-932 MHP (pr)

Petitioner,

No. C 06-932 MHP (pr)

13 || SCOTT M. KERNAN, warden.

### Respondent.

16 Patrick Fitzgerald Chioino filed a pro se petition for a writ of habeas corpus pursuant  
17 to 28 U.S.C. § 2254 challenging his 2004 conviction in Monterey County Superior Court.  
18 This court granted the petition on his claim that his sentence violated the Apprendi rule and  
19 ordered that he be resentenced to 18 years in prison. Respondent appealed. The Ninth  
20 Circuit reversed and remanded the case to this court with directions for this court "to amend  
21 its order to require that the matter be remanded to the state trial court for resentencing."  
22 Chioino v. Kernan, 581 F.3d 1182, 1186 (9th Cir. 2009). The Ninth Circuit's mandate issued  
23 recently. Accordingly, the court's order granting petition for writ of habeas corpus is now  
24 amended to (a) delete the text beginning at page 11:24 (starting with the beginning of the  
25 sentence that begins with the phrase "The record only supports") through the end of the  
26 paragraph at page 12:4, and (b) replace that text with the sentence: "Chioino must be  
27 resentenced."

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1        This matter is remanded to the state court for resentencing consistent with the decision  
2 of the United States Court of Appeals for the Ninth Circuit.

3        The clerk shall mail a copy of this order to the Monterey County Public Defender at  
4 111 W. Alisal Street, Salinas, CA 93901.

5        **IT IS SO ORDERED.**

6        DATED: November 6, 2009

  
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Marilyn Hall Patel  
United States District Judge